Position Paper

Modernisation of the Trade Pillar of the EU-Mexico Global Agreement

Key issues for the mechanical engineering industry

- **Dismantle remaining trade barriers**
- **Update rules of origin in accordance with other EU Trade Agreements**
- **Reduce technical barriers to trade through better implementation of Article 19 of the Decision 2/2000 EU-Mexico Joint Council**
- **Add protection of foreign direct investments**
- **Provide access to public procurement markets on national and local levels**

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1. Preliminary

The German Engineering Association (VDMA) is the largest European association in the capital goods industry with over 3,200 German and international member companies. The sector employs over 1 million people (as at January 2016) in Germany and generated revenues of around €218 billion in 2015.

The capital goods industry has a large number of medium-sized companies. Around 87% of all VDMA members are small and medium-sized enterprises (SMEs) according to the EU definition with two-thirds employing fewer than 100 staff. The sector is not only heavily export-oriented with an average export ratio of 77% but is also extremely successful globally. One indication of this is that almost 60% of exports are sold outside of the EU. The sector's high level of innovation is reflected in the fact that VDMA member companies are currently global market leaders in 18 of 31 internationally comparable product areas in the mechanical engineering industry.

To ensure the mechanical engineering industry can continue to operate successfully Europe-wide, export markets have to be kept open or existing trade barriers to markets dismantled. Only in this way can sustainable growth be achieved and jobs maintained or created in Europe.

2. Key issues for the mechanical engineering industry

Despite the EU-Mexico FTA, trade in German mechanical engineering products with Mexico is being held back mainly by divergent technical regulations and conformity assessment procedures. In this regard, the German mechanical engineering industry would benefit from modernization and closer cooperatio1020n. On the other hand, Mexico could invest more easily in modern technologies from Europe, and expand its trade relations.

In VDMA's view, the updating of the EU-Mexico FTA should include the following aspects:

2.1. Rules of origin

Introduction

Since October 2000 it has been possible to import most mechanical engineering products into Mexico tariff-free provided they are goods of EU origin in accordance with the applicable origin protocol. Gradual tariff dismantling was agreed for a small number of mechanical engineering goods with complete freedom from tariffs only being achieved in 2007. Goods of EU origin enjoy a reduction in the customs clearance charges incurred when imported to Mexico.

Current rules of origin

The rules of origin agreed in the origin protocol, including the product-specific processing and machining rules, are largely in line with the rules familiar to companies from other agreements (e.g. EFTA states).

VDMA calls for

The rules in the Pan-European-Mediterranean Agreement (PEM) are currently being updated (e.g. increase in permitted third-country shares). VDMA is calling for the updated PEM rules to also be applied to the updating of the EU-Mexico FTA so that companies (especially SMEs) can work with uniform rules for all agreements in practice.

2.2. Technical Barriers to Trade (TBT)

Introduction

Technical barriers to trade are stated in Article 19 (Standards, Technical Regulations and Conformity Assessment Procedures) of the "Decision no 2/2000 of the EC/Mexico Joint Council of 23 March 2000" based on the EU-Mexico FTA. This article generally refers to the WTO TBT agreement. It encourages the harmonisation of standards, technical regulations and conformity assessment procedures via exchange of information and the use of international standards. Furthermore, bilateral cooperation shall be enforced and technical advice shall be provided.

In addition to that, a joint committee was established to monitor and to enhance the process of harmonisation. In the first meetings of that Special Committee on Standards and Technical Regulations information was exchanged about both schemes concerning standards, technical regulations and conformity assessment procedures. Furthermore fields of a closer cooperation were determined for example:

- Electric products and electrical appliances (recognition of international IEC standards and their equivalence to the NOMs with recognition of conformity results)
- Registration, evaluation, authorization and restriction of chemicals (REACH)
- Labelling requirements for textile products
- Registration of medicines and medical devices

The harmonisation of technical regulations and standards supported by the Special Committee has not proved satisfactory until now. Practical results are missing so far. Closer cooperation would be desirable for more mutually satisfactory results to both sides.

Regulatory situation in Mexico

In accordance with the Federal Law on Standardisation and Metrology (Ley Federal de Metrología y Normalización), standards can be classified under two categories - in the Official Standards (Normas Oficiales Mexicanas - NOM) and Mexican 'Voluntary' Standards (Normas - NMX). The NOMs are issued by the competent ministries and government agencies and include technical regulations for product safety and labelling requirements. NOMs take into account international, mainly US standards and indicate whether there are concordances with these standards.

Compliance with NOM is mandatory and is subject to a conformity assessment by a “third party”. This could be a competent authority or a recognised conformity assessment body. The required product testing must be carried out by a Mexican testing institute or laboratory, which has an accreditation by the Ministry of Economy (Secretaria de Economía - SE).

The NMX are voluntary standards issued by Mexican national standardisation bodies. Compliance with NMX is only mandatory when a claim is made that a product meets the NMX, or when a NOM specifies compliance. It is proven by a NOM Certificate of Conformity.

VDMA calls for

In summary, VDMA calls for improved implementation of Article 19 of the Decision No 2/2000 of the EC-Mexico Joint Council of 23 March 2000.

In particular VDMA advocates reducing the TBTs in the mechanical engineering sector:

2.2.1. Transparent development of consistent technical regulations

VDMA calls for cooperation between regulatory authorities at national level in order to harmonize the different technical regulations between Mexico and Europe. The cooperation should be supported by the Special Committee on Standards and Technical Regulations. The objective of this body is to foster timely and continuous exchange of information with regard to new regulatory projects and to support the joint and transparent development of international technical regulations. Therefore an extension of fields of closer cooperation and a report about the periodic meetings of the Special Committee on Standards and Technical Regulations would be helpful.

2.2.2. Force use of international ISO/IEC/ITU standards

VDMA calls for the harmonization of technical requirements for machines on the basis of coherent international standards. Many requirements dealing with the safety of products have already been stipulated accordingly in international standards. The objective is to establish internationally-recognized standards as accepted standards in trade between the Mexico and the EU, in line with the VDMA principle: “One standard, one test – accepted everywhere.”

Mexico, represented by the Dirección General de Normas (DGN) of the Ministry of Economy (SE) is a member of the International Organization for Standardization (ISO) and actively contributes to the work of these standardization committees. Therefore, it should be possible to adopt more international ISO/IEC/ITU standards in the Mexican NOMs.

2.2.3. Comparable requirements for test laboratories

To ensure equivalent competence of the test laboratories, international standards such as the ISO/IEC standard 17025, the ISO/IEC standard 17065 and the internationally established accreditation system by the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF) should be used.

Comparable requirements for accredited test laboratories and their consistent approach in line with internationally accepted rules are essential for ensuring acceptance of test results in accordance with the VDMA principle: “One standard, one test – accepted everywhere.”

2.2.4. Mutual recognition of test results

To extend the mutual acceptance of test results of testing institutes or laboratories, it is conceivable that the Ministry of Economy (SE) could join the International Laboratory Accreditation Cooperation (ILAC) and sign ILAC’s Mutual Recognition Arrangement (MRA). This MRA serves to ensure that the accredited test laboratories accept one another's data and test results. The long-term objective is to achieve full mutual recognition of test results, including test results from accredited laboratories in other countries. This has been already done in Mexico’s energy sector. As a result of reforms in April 2016 Mexican authorities now recognise test results issued by testing laboratories accredited according to ISO/IEC 17025 by accreditation bodies that are signatories to the ILAC Mutual Recognition Agreement (MRA).

2.2.5. Mutual recognition of Certificates of conformity

VDMA demands that the amended EU-Mexico FTA includes an element of regulatory cooperation in the drafting of common technical rules. Mutual recognition of the corresponding Certificates of conformity can be achieved if regulations and requirements are identical and the test laboratories' prerequisites are comparable. The objective should be to avoid duplicates and thus unnecessary certificates on both sides.

2.3. Investment protection

Many existing investment promotion and protection agreements include an investor-state dispute settlement (ISDS). Investors are able to assert their rights before arbitration courts under international law, independently of national legal proceedings. Provisions for the proceedings and the composition of the courts are specified in the corresponding agreements.

Due to public criticism of existing ISDS, in particular in Europe, the European Commission submitted a proposal for a reform of investor protection under TTIP and other free trade agreements on November 12, 2015. This proposal includes a public jurisdiction system for investment consisting of a trial court and an appeal body. The chamber is to comprise highly qualified, publicly-appointed judges. Furthermore, an appeal body with principles similar to WTO dispute settlement is envisaged.

VDMA calls for

VDMA believes that companies that invest in a foreign country should enjoy legal safeguards. For this reason, reliable protection of investments made in Mexico should form an integral part of the modernisation of the Trade Pillar of the EU-Mexico Global Agreement. Among other things, the new agreement should protect foreign investors from unfair and inequitable treatment and compulsory expropriation without compensation in Mexico. VDMA considers the modernisation of the Trade Pillar an opportunity to implement the reform measures for investor protection proposed by the European Commission. The regulations on investor protection should also be manageable for small and medium-sized companies, meaning that the duration and costs of the associated proceedings should be reasonable for these companies as well.

2.4. Public Procurement

The current EU-Mexico Global Agreement includes rules for reciprocal access to public procurement markets in Article 28 of the Joint Council Decision No 2/2000. The Article refers to certain provisions in the North Atlantic Free Trade Agreement (NAFTA) in the case of Mexico and to the WTO General Procurement Agreement (GPA) in the case of the EU. However, Art 28 only takes into consideration a certain number of provisions on public procurement access from NAFTA allowing Mexico to treat European companies in public procurement procedures less favourably than companies from the NAFTA area.

VDMA calls for

VDMA calls for equal treatment between European companies and locally based companies in public procurement procedures in Mexico both on the federal and local level. The Comprehensive Economic and Trade Agreement (CETA) concluded recently between the EU and Canada includes rules that ensure equal treatment between foreign and local companies in public procurement procedures. In this respect, the CETA provisions on public procurement should serve as an ideal case for access to public procurement markets for foreign companies.

3. Importance of Mexico to the EU and German mechanical engineering industry

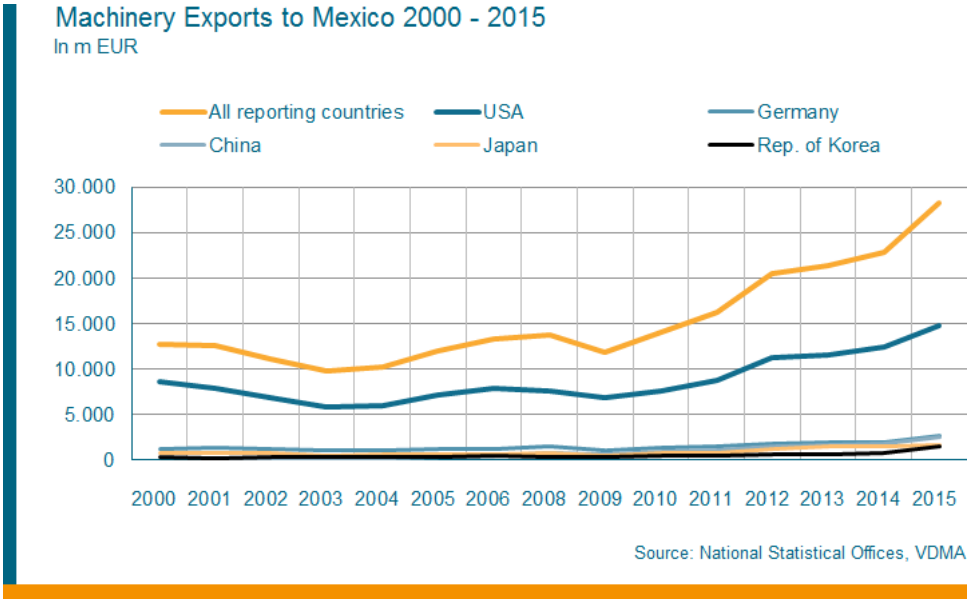
Machinery supplies of all countries remained at a volume of € 12.8 billion from the beginning of the last decade to around 2007. After a small decline in 2009 to € 11.8 billion, they increased sharply reaching € 22.8 billion in 2014, followed by strong upturn in 2015 to € 28.4 billion.

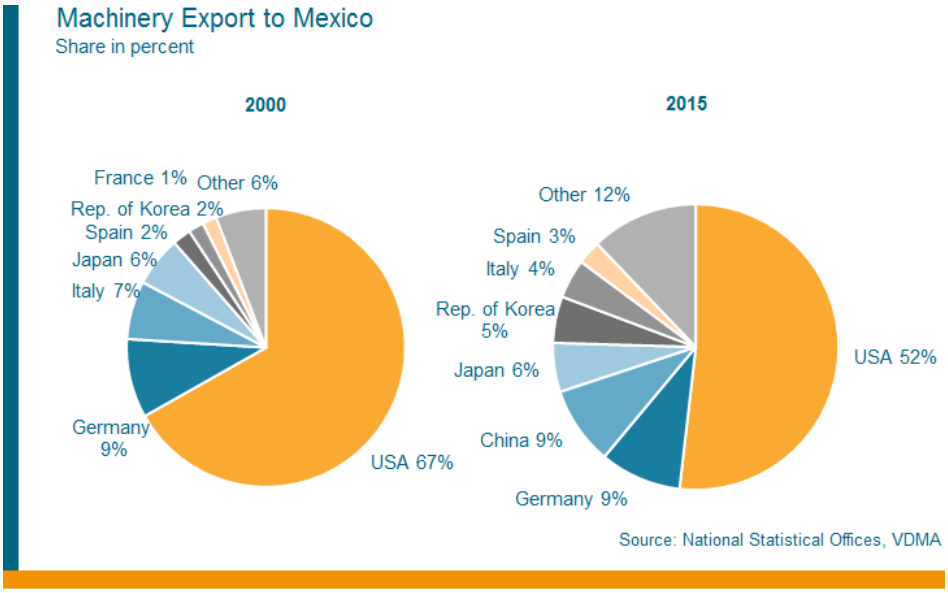
German machinery exports to Mexico reflected this trend. They stabilized at around € 1.2 billion until 2007, fell to € 1 billion in 2009 and climbed sharply from 2010 coming in at € 1.9 billion in 2014 and then soaring to an all-time high of € 2.6 billion in 2015.

The ranking of supplier countries has changed since 2000

In 2000 there was very much a sense of still being in the USA's backyard in terms of machinery exports to Mexico. Two-thirds of all machinery supplies to Mexico came from the USA. This share has since shrunk to just over half. The USA's loss of share is concentrated in the period up to 2007.

Germany is traditionally the second-strongest supplier with a share of around 9%. Japan is a consistent contender with a share of around 6%. In the early years, Italy still ranked above Japan but has recently dropped out of the top 5, as did Spain before it. China has been in the top 5 since 2007 and South Korea featured for the first time in 2015. The Chinese share stood at just below that of Germany's in 2015.

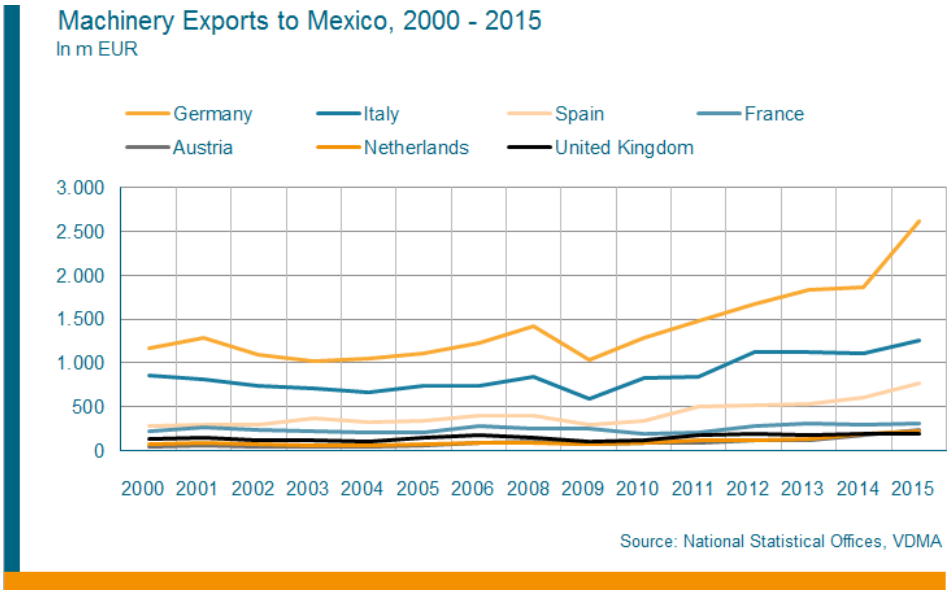




EU exports perform more dynamically from 2009

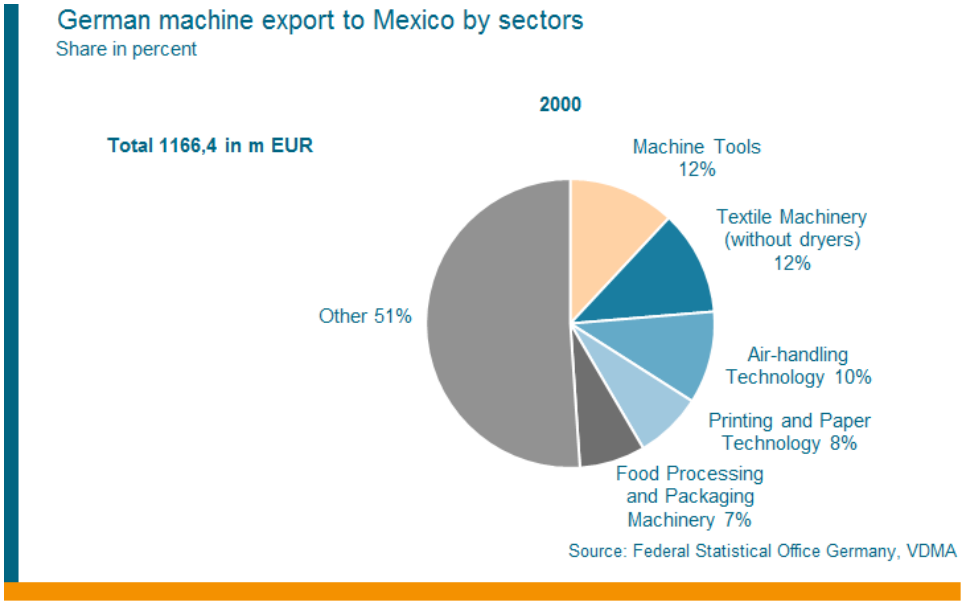
Comparing supplier volumes in 2014 with those in 2000 shows an increase of 60% for Germany, 29% for Italy, 119% for Spain, 36% for France, 158% for the Netherlands and 51% for the UK. However, overall European supplies only began increasing at a greater pace from 2009. Directly after the entry into force of the EU-Mexico Global Agreement, European machinery supplies only climbed slowly at first. German supplies increased by 4% in 2007 compared with 2000, Italian supplies fell by 4%, Spanish exports rose by 38% and French by 19%.

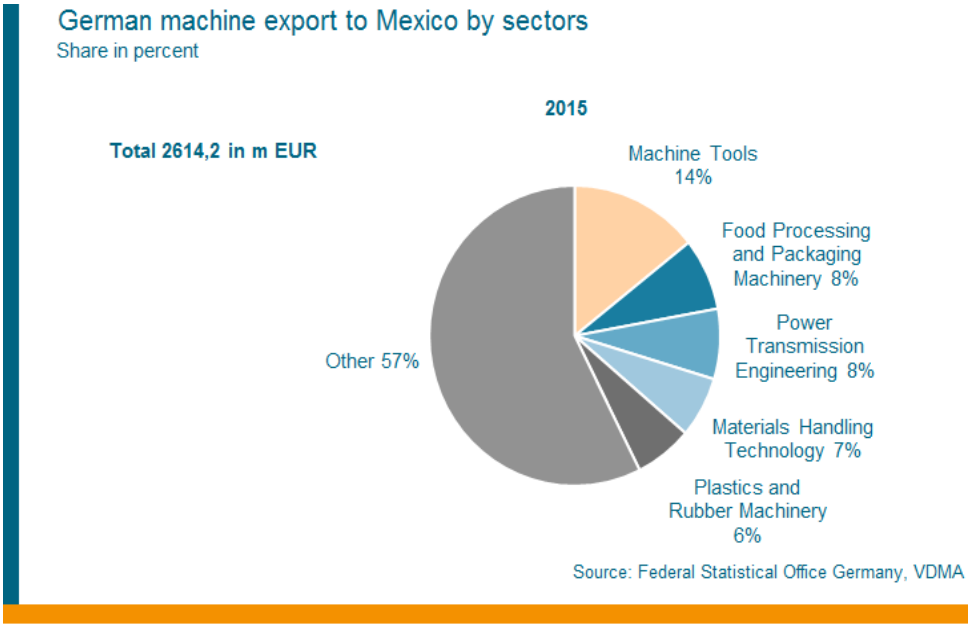
The situation nevertheless looked different after 2009. If the extreme figures from 2015 are discarded and the 2014 results are used for a long-term view, it is apparent that since 2009 all countries, with few exceptions, were able to expand their activities in Mexico at the same rate as Germany which increased its exports to Mexico by 81% during this period. Of the major countries, only France, with a 19% increase, lagged behind the general trend. In contrast, Spain and Italy expanded more quickly.



German machinery exports have diversified

In 2015 more sectors of the German mechanical engineering industry were exporting to Mexico overall than in 2000. It is evident that the five largest sectors at the time accounted for 49% of machinery exports in 2000 whereas the five largest combined only made up 42.7% of the total in 2015. Machine tools consistently came out on top with a two-digit share. Within that wide spectrum, machining centres have been very successful recently. Food processing and packaging machinery were also always in the top five. Of these, brewing machines accounted for the biggest share at 46%. Power transmission engineering has also been amongst the top positions for some time.





Machinery exports from third states

Japanese machinery exports to Mexico in recent years have been dominated by machine tools (also lots of machining centres), Power transmission engineering and precision tools each with two-digit shares. Precision tools (e.g. punching tools) and air-handling technology (e.g. cooling compressors) have always been prominent in South-Korean supplies to Mexico with two-digit shares. Machine tools (largest share: machining centres) have surprisingly occupied top position recently.

Air-handling technology, half of which is air-conditioning systems, has topped the Chinese supplies for some time. Materials handling technology and valves have also featured prominently recently. Material handling technology in 2015 included large supplies of gantry cranes and cranes for unloading containers.

US exports are topped by air-handling technology, often followed by power transmission engineering. Leading items in air-handling technology are automotive catalytic converters, cooling compressors and air-conditioning systems. No item accounts for over 10% in Power transmission engineering.

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